IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTY SECOND DAY OF MARCH,
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE B. PRAKASH RAO

WRIT PETITION NO: 7890 of 1999

Between:

K. Kotaiah S/o. K.Lingaiah
R/o Suryapet, Nalgonda District.

..... PETITIONER

AND

1. The APSRTC., rep. by its Managing Director
   Musheerabad, Hyderabad.
2. The Regional Manager, APSRTC.,
   Nalgonda, Nalgonda District.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an order or direction more particularly one in the Nature of *Writ of Mandamus* declaring the action of the respondents not providing the alternative employment is illegal and arbitrary and consequently direct the respondents to provide the alternative employment to the petitioner in terms of the Section 47 of the Persons With Disabilities (Equal Opportunities Protection of Right and Full Participation) Act, 1995.

Counsel for the Petitioner: MR. P. SRIDHARA RAO

Counsel for the Respondents:1 & 2: MR.V.T.M. PRASAD, SC FOR APSRTC

The Court made the following:

ORDER:

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Heard Sri P. Sreedhara Rao, the learned counsel for the petitioner and Sri V.T.M. Prasad, the learned standing counsel for the respondents 1 and 2.

2. The petitioner, who has been working as driver with the respondent corporation filed this writ petition, *inter alia*, seeking Writ of Mandamus declaring the action of the respondents herein in not providing alternative employment, as illegal and arbitrary and further a direction to provide alternative employment to the petitioner in terms of Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, (for short 'the Act') and the rules made thereunder.

3. The case of the petitioner, in brief, is that initially he was appointed as a driver on 15.11.1975 by the A.P. State Road Transport Corporation and he has been discharging his duties to the utmost satisfaction of his superiors. Subsequently, he was sent for medical check up on 13.05.1993 to the APSRTC Hospital, Taranaka, and he was admitted in the said Hospital up to 23.07.1994 and on 23.07.1994 he was declared as medically unfit for A-1 category driver due to eye defect and he was placed under leave from 23.07.1994. Therefore, he made a representation on 15.04.1995 to the 2nd respondent to provide alternative employment. Since no action has been taken by the 2nd respondent, the petitioner filed a writ petition No.18794 of 1995, which was allowed on 4.3.1996 directing the respondents authorities to include the name of the petitioner in the concerned division-wise seniority list. Accordingly, the petitioner made an application on 12.04.1996 and thereupon the second respondent, by a letter dated 10.07.1996 informed the petitioner that his name was included in the Regional seniority list of medically unfit drivers, who desired alternative employment under 10% quota and his name figures at serial No.08. Since no action has been taken in spite of such representation, the present writ petition has been filed.

4. In the counter affidavit filed on behalf of the respondent corporation, it is stated that pursuant to the orders of this Court dated 4.3.1996 made in W.P. No. 18794 of 1995, a seniority list of all such medically unfit drivers at Regional level was prepared for consideration to the post of cleaner against 10% quota reserved for them. In the said seniority list, the petitioner was placed at Serial No.8 and the same was informed to the petitioner vide letter No.HC/402 (136)/96-RM-N, dated10-7-1996. The petitioner was also informed that whenever vacancies arise in the region

and his turn comes as per the seniority list, he will be provided with alternative employment under 10% quota as directed by this Court. The petitioner was further informed that due to non-availability of vacancies, the petitioner cannot seek any relief for providing such post or any other relief as has been sought for in the aforesaid representation, and hence, the writ petition is liable to be dismissed.

5. In the meanwhile, there have been other proceedings also took place between the parties and it is not necessary for going into the same at this stage.

6. Having heard the learned counsel for both the parties and also on perusal of the record, the question that falls for consideration as to whether the petitioner is entitled for the benefit as contemplated under Section 47 of the Act, and the rules made thereunder.

7. There is no dispute of the fact that the petitioner having been appointed in the year 1975 and after long service, he was declared as medically unfit for the post of A-1 category driver on 23.07.1994 due to eye defect. In view of the same, the petitioner has been knocking the doors of the respondent Corporation and ultimately seeking a direction to consider his case, more aptly, in terms of the aforesaid provision for providing alternative employment. Subsequently, it is reported that the petitioner has been given a post of cleaner in the year 1999 and ultimately on attaining the age of superannuation, he was retired from service in the year 2002. But, however, the main submission made on behalf of the petitioner is that in terms of the aforesaid provision, the petitioner's pay scale has to be protected and he would be entitled to get the same as he was getting the same in the regular post, which he was holding. In support of it, the petitioner sought to place reliance on the provisions of Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (Along with Rules, 1996), which reads as follows:

> **"Non-discrimination in Government employment:- (1) No establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service:**

Provided that, if any employee, after acquiring disability is not suitable for the post he was holding, could be shifted to some other post with the same pay scale and service benefits:

Provided further that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier.

2) No promotion shall be denied to a person merely on the ground of his disability:

Provided that the appropriate Government may, having regard to the type of work carried on in any establishment, by notification and subject to such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of this section."

8 . On a plain reading of the aforesaid provision, it not only contemplates the provision of providing alternative employment, but also protecting the pay scale and service benefits of the post, which he was holding at the relevant point of time.

9. Admittedly, in the instant case, though the petitioner was given a post of cleaner, he was not being paid the pay scale for which he is entitled to as driver almost from the year 1994 onwards.

10. The learned counsel appearing on behalf of the respondent Corporation raised an objection to the effect that the aforesaid Act cannot be made applicable retrospectively. The said Act has came into force with effect from 1.1.1996, whereas the petitioner was declared as medically unfit on 23.07.1994 and therefore, the petitioner cannot be called back on the said provision to seek any relief.

11. In reply, the learned counsel appearing for the petitioner submitted that on the similar lines as provided under the aforesaid Act, a circular is existing with the respondent corporation for providing alternative employment and also protecting the

pay scale and service benefits. On the basis of which, this court has already been given such relief even in cases which pertains to the period prior to the enforcement of the aforesaid Act, as per the orders W.P. No.14780 of 1991, dated 27.07.1995. Thus, on a reading of the aforesaid section, there is always a provision for providing alternative employment and also protecting the pay scale. In the circumstances, it has to be held that the petitioner is entitled to the said pay scale as he was getting as A-1 category driver from the date when he was declared as medically unfit till the date of his retirement, and he is also entitled for pensionery benefits.

12. Accordingly, the writ petition is allowed directing the respondent corporation to pay all such amounts to which the petitioner is entitled, within a period of six (6) weeks from the date of receipt of a copy of this order. No order as to costs.

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(B. PRAKASH RAO, J)

Date: 22.03.2005

Ksn

This Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this the 22nd day of March, Two thousand and five.

REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1. The Managing Director, A.P. State Road Transport Corporation,
   Musheerabad, Hyderabad.

2. The Regional Manager, APSRTC.,
   Nalgonda, Nalgonda District.

3. 2 CD copies

*Form-NIC-OGS/WP{**ESWAR**}*